

# SCHUST ENGINEERING, INC. TERMS AND CONDITIONS

## 1. Acceptance

These Terms and Conditions of Sale form part of each Proposal submitted by Schust Engineering, Inc. (Schust) for the sale of equipment described herein (Equipment) or services to Buyer. ANY CONTRACT MADE BY AND BETWEEN THE PARTIES IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS AND TO SCHUST'S REVIEW AND APPROVAL OF BUYER'S CREDIT. Unless otherwise stated herein. Buyer has thirty (30) days from the date of the Proposal to notify Schust in writing of Buyer's offer to enter into a contract on the basis of this proposal. Upon written notification by Schust from its office in Auburn, Indiana that it has accepted such an offer by Buyer, this Proposal shall become a contract between Buyer and Schust.

## 2. Erection of Equipment

Any such erection services will be furnished in accordance with Schust's Terms and Conditions of Sale.

## 3. Warranty

Schust warrants that the Equipment and installation described herein, but only in so far as it is of Schust's subcontractor's manufacture, will be free from defects in material and workmanship for a period of 12 months from date of delivery ("warranty period"). All Equipment manufactured by Schust equipment vendors carries only the warranty given by the manufacturer thereof which warranty Schust will make available to the extent permissible to Buyer without recourse to Schust. If, within the warranty period Schust receives written notice promptly after the discovery of any defect in the material or workmanship in the Equipment warranted by Schust herein, Schust shall correct each such defect, at Schust's option, either by (1) making available F.O.B. Schust's plant repair or replacement part(s); or (2) repairing any defective part(s). Except otherwise expressly set forth herein, THERE ARE NO OTHER WARRANTIES, EMPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Liability of Schust under this warranty is conditioned upon the Equipment being handled, erected, operated, and maintained in accordance with written instructions provided or approved in writing by Schust. Schust makes no warranties which extend to damage to the Equipment above rated capacities or in otherwise improper manner. Schust's sole responsibility for defects in material and workmanship in Equipment, and Buyer's exclusive remedy hereunder, shall be limited as above provided.

## 4. Taxes

In addition to the price specified herein, Buyer shall pay any present or future tax imposed by any governmental body on the sale, delivery, use of other handling of Equipment sold hereunder or in connection with this Proposal or any transaction contemplated hereby.

## 5. Security Interest

Schust reserves a security interest in Equipment delivered hereunder until it receives full payment thereof. If Buyer fails to make any payment when due, then in addition to all other remedies available to Schust either at law or otherwise, Schust may, at its option, terminate the contract or suspend the delivery of goods pending the cure of any such default by Buyer and receipt of cash for each such delivery to be made of other security reasonably satisfactory to Schust.

## 6. Force Majeure

Schust Shall not be responsible for losses or damages to Buyer (or any third person) occasioned by delays in the performance or nonperformance of any of Schust's obligations or by loss of or damage to any of the Equipment specified in the Proposal when caused directly or indirectly by acts of God, substantial changes in general economic conditions, acts or government or military authority, casualty, riot, acts or Buyer, strikes or other labor difficulties, shortages or labor, supplies, and transportation facilities or any other cause beyond Schust's control or the control of its supplier or subcontractors.

## 7. Cancellation

Buyer may cancel any contract resulting from this Proposal only upon written notice to Schust and only upon such term as will identify and reimburse Schust for all loss or damage resulting therefrom, including

without limitation, Schust's direct costs, incurred overhead, reasonable contract profits, costs, and expenses to which Schust has become committed for fulfillment of the contract prior to cancellation.

## 8. Laws and Regulations

Except as expressly set forth herein, Schust does not assume responsibility for compliance with federal, state, or local Laws and regulations. All laws and regulations expressly referenced herein shall refer only to those editions or versions thereof in effect on the date of the Proposal. In the event of revisions or changes thereto subsequent to the date of this proposal, Schust assumes no responsibility or liability for compliance therewith. If Buyer desires in such laws or regulations, such modification shall be treated as a Change Order under Article 10 hereof.

## 9. Occupational Safety and Health Act

Schust warrants that the Equipment furnished hereunder shall, to the extent such Equipment is used in accordance with Schust instructions, comply with safety equipment requirements of the Occupational Safety and Health Act of 1970 regulations, as amended, (OSHA requirements) in effect on the date of the Schust's Proposal. Schust shall not be responsible for failure to comply with OSHA requirements which result from the location, operation, use of maintenance of the Equipment or from alteration of the Equipment by persons other than Schust or from an option or accessory attached to the equipment that was available to the Buyer but omitted at the Buyer's direction or from design or instructions furnished by the Buyer. Schust's responsibility for breach of this warranty is limited to modification or replacement of the Equipment cited as violating OSHA requirement. All OSHA requirements with respect to noise are specifically excluded from this warranty. The remedies and warranty provided herein are the entire and exclusive responsibility of Schust with respect to OSHA requirements. This OSHA warranty is subject to the conditions in the warranty applicable to the Equipment.

## 10. Change Orders

Buyers may make changes, within the general scope of work included in this Proposal, to the plans, equipment or specifications. Included in this Proposal by giving written notice in a Change Order. Within thirty (30) days from receipt of such Change Order, Schust shall submit the Buyer the changes required to the contract price and delivery schedule resulting from such a Change Order. Schust shall have no obligation to proceed with such Change Order until Schust and Buyer agree in writing to such changes in the contract price and delivery schedule. Changes to Standard Products air filtration orders after completion of any such product engineering shall be subject to additional engineering fees and will result in delays of shipment.

## 11. Bonds

In addition to the price specified herein, Buyer shall pay the cost of any bonds which Buyer requires Schust to obtain. Buyer Supplied Data Buyer acknowledges that Schust has relied upon all specifications and other data supplied by Buyer (conditions) to Schust in the selection and design of the equipment and the preparation of this Proposal. In the event the conditions differ from those represented by Buyer and relied upon by Schust, any warranties or performance guarantees contained herein affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

## 12. Buyer Supplied Data

Buyer acknowledges that Schust has relied upon all specifications and other data supplied by Buyer (conditions) to Schust in the selection and design of the equipment and the preparation of this Proposal. In the event the conditions differ from those represented by Buyer and relied upon by Schust, any warranties or performance guarantees contained herein affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

## 13. Subcontracts

Schust may subcontract any portion of the fabrication and erection work included in the proposal.

## 14. Storage

If Buyer declines or is unable to take delivery at the time(s) specified in the Proposal, Schust will have the Equipment stored for Buyer at Buyer's risk and account. Buyer will pay storage, handling and re-handling

# SCHUST ENGINEERING, INC.

## TERMS AND CONDITIONS

charges and continue to make payment according to the payment terms contained herein.

### 15. Delivery/Freight Rates/Shipment

Delivery to carrier at point of shipment shall constitute delivery to Buyer who shall assume all risk for subsequent loss or damage. Any increases or decreases in freight charges between the effective date of Schust's Proposal and the date of final shipment will be for Buyer's account. Schust shall have the right to ship all of the goods at one time or in portions from time to time within the time of shipment. This contract shall be deemed separable as to the good sold. Purchaser may not refuse to accept any lot or portion of goods hereunder on the grounds that there has been a failure to ship any other lot or that any goods in any other lot were nonconforming. Any such default by Schust will not substantially impair the value of this contract as a whole and will not constitute a breach of contract as a whole.

### 16. Propriety Material

All drawings, patterns, specifications and information included in the Proposal, and all information otherwise supplied by Schust relating to the design, erection, operation, and maintenance of the Equipment is the property and/or confidential material or information of Schust. Buyer shall not disclose such material or information to others or allow others to use such material or information except as required for Buyer to obtain service for Equipment.

### 17. Price

Due to the instability of costs, prices are subject to change without notice and shall not be binding on Schust Engineering, Inc. (Schust). Steel pricing is based upon current market prices and shall be subject to an escalation surcharge based upon the BLS WPU101 (Iron and Steel) Material Price Adjustment Base Indices and shall be paid by the purchaser. In no event will the final price be less than the original contract. Prices quoted include standard packing according to Schust's specifications. Purchaser shall pay for special packaging requested by Purchaser, including packaging for exports, and shall be paid by Purchaser as an additional charge.

### 18. Credit an Payment

Credit accounts will be opened only with firms or individuals approved by Schust's credit department. Unless otherwise provided, in any case where delivery is made on credit, Purchaser shall have thirty (30) days from date of invoice in which to make payments of goods. Unless prohibited by law (in which case accounts past due shall bear interest at a rate of eight (8) percent annum), accounts past due shall bear interest at the then prime rate charged by U.S Bank N.A. Schust reserves the right at any time upon notice to Purchaser, to alter or suspend credit, or to change the credit terms provided herein, when it is the sole opinion the financial condition of Purchaser so warrants. In addition, Schust may at anytime, with or without notice to Purchaser, and at its option, suspend work and shipments under this contract if, in Schust's sole opinion, the financial condition of Purchaser so warrants. In such cases, in addition to any other remedies herein or by law provided, Schust may require cash payment or satisfactory securities from Purchaser before credit is restored or Schust continues performance. If Purchaser fails to make payment or fails to furnish security satisfactory to Schust, then Schust shall also have the right to enforce payment of the full contract price of the work completed and in process. Upon default by Purchaser in payment due, Purchaser shall pay immediately to Schust the entire unpaid amounts for any and all shipments, made to Purchaser irrespective of the terms of said shipments and whether said shipments are made pursuant to this contract of sale between Schust and Purchaser, and Schust may withhold all subsequent shipments until the full account is settled. Acceptance of less than full payment shall not be a waiver of any of its rights hereunder.

### 19. Title

The risk of loss of the goods shall pass to the Purchaser as soon as they are deposited with the carrier for shipment to Purchaser, but the title of goods shall remain in Schust until the purchase price therefore has been paid.

### 20. Inspection and Acceptance

The Seller shall have right to inspect, after prior notification, the Equipment supplied by it when in operation, and prior to operation when deemed necessary by the Seller. Purchaser shall have the right to inspect goods upon receipt and shall have the opportunity at that time to run sufficient tests to determine whether goods shipped conform to the specifications of this contract. Purchaser shall recompense Schust, at the contract price, for all goods used in testing. Purchaser shall bear any expense incurred in the inspection of the goods used in testing whether or not the goods are nonconforming. Failure to inspect the goods or inform Schust in writing that the goods are nonconforming within ten (10) days of the receipt of the goods by the purchaser shall constitute a waiver of Purchaser's rights of inspection and notification of nonconformity and shall be equivalent to an irrevocable acceptance of goods by the Purchaser.

### 21. Waiver of Subrogation

Purchaser further agrees to waive all rights of subrogation that would otherwise be available to its insurers, regardless of the theory of recovery, relating in any way to the design, testing, manufacture, sale or installation of any goods, any components, or related services.

### 22. Restocking Charges

Return goods must be authorized by a Schust employee and returned to a designated point of manufacture within the specified time. Return goods may be subject to restocking and freight charges.

### 23. Supervisory Personnel

Supervisory Personnel will be supplied, upon request by the Purchaser, on a per diem basis in accordance with the Sellers standard rates in effect at the time of the request.

### 24. Limitation on Liability

Schust's responsibility for any claims, damages, losses or liabilities arising out of or related to its performance of this proposal of the Equipment covered hereunder, including but not limited to any correction of Equipment defects under the Warranty or any applicable performance guarantees, shall not exceed the purchase price. In no event shall Schust be liable for any special, indirect, incidental, consequential, or punitive damages of any character, including but not limited to, loss of use of productive facilities or equipment, lost profits, property damages, personal injuries or lost production whether suffered by Buyer or any third party, irrespective of whether claims or actions for such damages are based upon contract, warranty, negligence, strict liability or otherwise.

### 25. Contract Interpretation

Any contract resulting from this Proposal shall be constructed and the legal relations of Schust and Buyer shall be determined in accordance with the laws of the State of Indiana. These terms and conditions herein and all communications, descriptions, drawings, specifications, and documents attached hereto and specifically incorporated herein, shall upon the formation of a binding contract in accordance with section (1) be deemed to constitute the sole and entire agreement and contract between the parties as to the subject matter hereof. No changes in or modifications of said agreement shall be binding upon the parties or either of them, unless they shall be in writing and signed by both parties.

### 26. Jurisdiction

Any legal proceeding brought by any party in conjunction with any of the terms or provisions of this transaction shall be brought exclusively in Allen County Circuit Court, State of Indiana. It is agreed that no court of any other jurisdiction shall hear or rule upon any aspect of this transaction.

### 27. Acceptance of Contract

It is agreed between the parties that all of the conditions in our proposition upon our bid not in direct conflict with terms or conditions of the Purchaser remain in full force and effect, notwithstanding clauses in the terms and conditions of Purchaser. It is further agreed that no phraseology imposes any liability upon Seller that is covered by workman's compensation of Purchaser. It is further agreed that Seller is not responsible for any negligence or improper acts that cause damage, which negligence or improper acts are those of Purchaser's employees, officers, or other contractors.